

reverses, can be considered as reasons for a longer repayment period on loans for annual operating purposes. When longer than normal repayment terms are used for annual operating purposes, crops and/or livestock produced for sale will not be considered sufficient security. The County Supervisor may use Form FmHA or its successor agency under Public Law 103-354 440-9, "Supplementary Payment Agreement," for borrowers who receive substantial income from which payment is to be made before their installment due date.

(3) Advances for purposes other than annual operating expenses will be scheduled for payment over the minimum period necessary considering the applicant's ability to pay and the useful life of the security, but not in excess of 7 years.

(4) When conditions warrant, installment scheduled in accordance with paragraph (b)(3) of this section may include equal, unequal, or balloon installments. In each case warranting balloon installments, there must be adequate collateral for the loan at the time the balloon payment is due. Circumstances which warrant balloon installments are factors such as establishing a new enterprise, developing a farm, purchasing feed while crops are being established or during recovery from a disaster, or economic reverses. In *no case* will annual crops be used as the sole collateral securing a balloon installment. A loan with a balloon installment must be adequately secured by hard security, which may include foundation stock, farm equipment and/or real estate. The amount of the balloon installment should not exceed that which the borrower could reasonably expect to pay during a maximum additional 7-year period.

[53 FR 35684, Sept. 14, 1988, as amended at 55 FR 21527, May 25, 1990; 57 FR 18676, Apr. 30, 1992; 57 FR 37400, Aug. 19, 1992; 61 FR 35925, July 9, 1996; 68 FR 62224, Nov. 3, 2003]

§ 1941.19 Security.

Primary security must be available for the loan. Any additional security available up to and including 150 percent of the loan amount also will be taken. Security in excess of 150 percent of the loan amount will only be taken

when it is not practical to separate the property, i.e., same type of livestock (dairy cows, brood sows). In cases when a loan is being made in conjunction with a servicing action, the security requirements as stated in subpart S of part 1951 of this chapter will prevail. In unusual cases, the loan approval official may require a cosigner in accordance with §1910.3 (d) of subpart A of part 1910 of this chapter or a pledge of security from a third party. A pledge of security is preferable to a cosigner.

(a) *Chattels.* (1) The loan must be secured by a first lien on all property or products acquired, produced, or refinanced with loan funds.

(2) If the security for the loan under paragraph (a)(1) of this section is not at least equal to 150 percent of the loan amount, the best lien obtainable will be taken on other chattel security owned by the applicant, if available, up to the point that security for the loan at least equals 150 percent of the loan amount.

(i) When there are several alternatives available (cattle, machinery), any one of which will meet the security requirements of this section, the approval official generally has the discretion to select the best alternative for obtaining security.

(ii) When alternatives exist and the applicant has a preference as to the property to be taken for security, however, the approval official will honor the preference so long as the requirements of paragraphs (a)(1) and (2) of this section are met.

(3) To comply with the 150 percent requirement, security values will be established as follows:

(i) For the purposes of loan making only, the security value of the crop and/or livestock production is presumed to be 100 percent of the amount loaned for annual operating and family living expenses listed on Form FmHA or its successor agency under Public Law 103-354 431-2, "Farm and Home Plan," or other acceptable plan of operation.

(ii) The specific livestock and/or equipment to be taken as security, along with the value of the security, will be documented in the case file. This information will be obtained from

values established in accordance with § 1941.25 of this subpart.

(b) *Real estate.* The loan approval official will require a lien on all or part of the applicant's real estate as security when chattel security alone is not at least equal to 150 percent of the amount of the loan. Different lien positions on real estate are considered separate and identifiable collateral. Real estate taken as security, along with its value established in accordance with § 1941.25 of this subpart, will be documented in the case file. If the applicant disagrees with the values established, FmHA or its successor agency under Public Law 103-354 will accept an appraisal from the applicant, obtained at the applicant's expense, if the appraisal meets all FmHA or its successor agency under Public Law 103-354 requirements.

(1) Security may also include assignments of leases or leasehold interests having mortgageable value, revenues, royalties from mineral rights, patents and copyrights, and pledges of security by third parties.

(2) Advice on obtaining security will be received from OGC when necessary.

(c) *Exceptions.* The County Supervisor will clearly document in the file when security is not taken for any of the following reasons:

(1) A lien will not be taken on property when it will prevent the applicant, or members of an entity applicant, from obtaining operating credit from other sources.

(2) A lien will not be taken on property that could have significant environmental problems/costs (e.g., known or suspected underground storage tanks or hazardous wastes, contingent liabilities, wetlands, endangered species, historic properties). Guidance is provided in part II, item H of exhibit A of FmHA Instruction 1922-E (available in any FmHA or its successor agency under Public Law 103-354 office) as to the action to be taken when the appraiser indicates that the property is subject to any hazards, detriments or limiting conditions.

(3) A lien will not be taken on property that cannot be made subject to a valid lien.

(4) A lien will not be taken on the applicant's personal residence and appur-

tenances, when the residence is located on a separate parcel and the farm tract(s) being used for collateral, in addition to any crops or chattels, meet the security requirement of at least equal to 150 percent of the loan.

(5) A lien will not be taken on subsistence livestock; cash or special cash collateral accounts to be used for the farming operation or for necessary living expenses; all types of retirement accounts; personal vehicles necessary for family living or farm operating purposes; household goods; and small tools and small equipment, such as hand tools, power lawn mowers, and other similar items not needed for security purposes.

(6) When title to a livestock or crop enterprise is held by a contractor under a written contract or the enterprise is to be managed by the applicant under a share lease or share agreement, an assignment of all or part of the applicant's share of the income will be taken. A form approved by OGC will be used to obtain the assignment.

(7) A lien will not be taken on timber or the marginal land for a loan for planting softwood timber trees on marginal land in conjunction with a softwood timber (ST) loan.

(d) *Assignment on income in Uniform Commercial Code (UCC) States.* The County Supervisor will determine whether or not such an assignment will be taken. In UCC States, an assignment of livestock or crop income constitutes a security agreement on income. The share lease, share agreement, or contract will be described specifically as "Contract Rights" or "Contract Rights in Livestock or Crops," (or as "Accounts" or "Accounts in Livestock or Crops," if required by a State supplement), and so forth, in paragraph 1(b) of the financing statement.

(e) *Insurance.* See § 1941.88 of subpart B of this part for insurance requirements.

(f) *Special security requirements.* When OL loans are made to eligible entities that consist of members who are presently indebted for an OL loan(s) as individual(s), or when OL loans are made to eligible individuals who are

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members of an entity which is presently indebted for an OL loan(s), security must consist of:

(1) Chattel and/or real estate security that is separate and identifiable from the security pledged to the Agency for any other farm credit programs direct or guaranteed loan(s).

(2) Different lien positions on real estate are considered separate and identifiable collateral.

(3) The outstanding amount of loans made may not exceed the value of the collateral used.

[53 FR 35684, Sept. 14, 1988, as amended at 54 FR 47959, Nov. 20, 1989; 56 FR 67480, Dec. 31, 1991; 57 FR 18676, Apr. 30, 1992; 59 FR 22961, May 4, 1994; 59 FR 25799, May 18, 1994; 61 FR 35925, July 9, 1996]

§§ 1941.20–1941.22 [Reserved]

§ 1941.23 General provisions.

(a) *Compliance requirements.* The following will apply as appropriate:

(1) Environmental assessments and statements. Subpart G of part 1940 of this chapter should be referred to for these requirements. The State Environmental Coordinator should be consulted for assistance in preparing any required statements.

(2) Equal opportunity and non-discrimination requirements. In accordance with title V of Pub. Law 93-495, the Equal Credit Opportunity Act, FmHA or its successor agency under Public Law 103-354 will not discriminate against any applicant on the basis of race, color, religion, sex, national origin, marital status, age or physical/mental handicap provided the applicant can execute a legal contract, with respect to any aspect of a credit transaction.

(3) National Historic Preservation Act of 1966. If a loan will affect any district, site, building, structure, or object that has been included in the National Register of Historic Places as maintained by the Department of Interior in accordance with the National Historic Preservation Act of 1966, or if the undertaking may affect properties having scientific, prehistorical, historical, or archaeological significance, the provisions of subpart F of part 1901 of this chapter will apply.

(b) *Other considerations.* (1) FmHA or its successor agency under Public Law 103-354 employees will not guarantee repayment of advances from other credit sources, either personally or on behalf of applicants, borrowers, or FmHA or its successor agency under Public Law 103-354.

(2) An applicant will be advised that compliance with all applicable special laws and regulations is required.

(3) An applicant must have acceptable tenure arrangements. Unless the loan approval official determines otherwise, each applicant will obtain a satisfactory written lease. A copy of the lease will be filed in the County Office case file.

[53 FR 35684, Sept. 14, 1988, as amended at 68 FR 62224, Nov. 3, 2003]

§ 1941.24 [Reserved]

§ 1941.25 Appraisals.

(a) Except as provided in paragraph (a)(5) of this section, real estate appraisals will be completed by an FmHA or its successor agency under Public Law 103-354 employee, or a contractor authorized to make farm appraisals. Chattel and real estate appraisals will be made on forms in accordance with § 761.7 of this title and, in the case of an appraisal of mineral rights' the appropriate Agency form (available in each Agency State Office) or other format that contains the same information, to determine market value and borrower equity in the following instances:

(1) When an initial loan is made, a chattel appraisal is required on all chattel property owned by the applicant, and on chattel property to be acquired when the item can be specifically identified.

(2) When a subsequent loan is made, a chattel appraisal is required when:

(i) Refinancing chattel debt.

(ii) The existing chattel appraisal is more than 2 years old.

(3) A real estate appraisal is not required when real estate is taken as additional security, as defined in § 1941.4 of this subpart. However, the County Supervisor will document in the running record the estimated market value of the additional security and the basis for the estimate.